

MINUTES

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

September 18, 2006

SUE BEITIA, CLERK

CASE NUMBER: CV NO. 04-00671 HG-LEK

CASE NAME: Raymond Ware v. Sidney A. Hayakawa, et al.

ATTYS FOR PLA: Daphne Barbee
Plaintiff Raymond Ware is present

ATTYS FOR DEFT: Thomas Helper

JUDGE: Helen Gillmor

REPORTER: Stephen Platt

DATE: September 18, 2006

TIME: 9:45 - 10:35

COURT ACTION: MINUTES

1) **FEDERAL DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT** filed on June 14, 2006 (Doc. 67);

2) Plaintiff's request pursuant to Rule 56(f) for more time to conduct discovery in **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO FEDERAL DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT**, filed on August 28, 2006 (Doc. 73, p. 20-21);

3) Plaintiff's request to continue the hearing and for extension of the trial and discovery deadlines in **PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANTS' SUMMARY JUDGMENT AND AMENDED MOTION TO CONTINUE HEARING DATE ON DEFENDANTS MOTION FOR SUMMARY JUDGMENT**, filed on September 14, 2006 (Doc. 78);

Oral argument held.

Plaintiff sought discovery pertaining to his recertification test and was provided

redacted documents, but is further challenging the withholding of such information in an action presently before the Ninth Circuit Court of Appeals. Specifically, Plaintiff seeks information about who constructed the test, the criteria for judging the subjective portion of the test, the manner of test grading, and the identity of who administered the test. Plaintiff asks the Court to deny summary judgment based on the Plaintiff's need for further discovery at this time.

Plaintiff alleged "hostile work environment" in the Amended Complaint (Doc. 27, ¶35) and wishes to conduct further discovery on that claim. Based on the June 13, 2006 statements by Mr. Kamahale in his declaration, Plaintiff also seeks to conduct further discovery regarding the complaints in Plaintiff's personnel file.

Although Plaintiff did not file a written motion to extend the discovery deadline, his counsel indicated that, in requesting additional discovery time under Rule 56(f) based on the pending Ninth Circuit appeal of discovery issues, she believed she had moved for an extension of the discovery deadline.

With respect to substitution and dismissal of parties, Plaintiff, through counsel, indicated in court that he has no objection to the substitution of Michael Cherthoff as the sole federal defendant. The Court ruled from the bench as follows:

1) The Defendants' **MOTION TO DISMISS AND FOR SUMMARY JUDGMENT** is **GRANTED IN PART (a)** and **DENIED IN PART (b)** as follows:

(a) The defendants' unopposed request for substitution of Michael Cherthoff, Secretary of the Department of Homeland Security, in his official capacity, as the sole federal defendant is **GRANTED**; the caption in this case is modified to reflect this change; all other defendants are **DISMISSED** as parties;

(b) The remainder of Defendants' motion is **DENIED WITHOUT PREJUDICE** at this time; after the close of discovery, the parties may file new dispositive motions in accordance with the newly-amended Scheduling Order;

2) Plaintiff's **REQUEST** under Rule 56(f) for more time to conduct discovery is **GRANTED**, based on the pending appeal before the Ninth Circuit and the specific additional information sought by Plaintiff;

3) Plaintiff's **REQUEST** for extension of the discovery deadline is **GRANTED**; the Amended Scheduling Order (Doc. 55) is **MODIFIED** as follows:

- a) The discovery deadline is moved to December 11, 2006;
- b) The final pre-trial conference before the Magistrate Judge shall be held on April 16, 2007 at 9:00 a.m.;
- c) The final pre-trial conference before the District Judge shall be held on May 4, 2007, at 8:30 a.m.;
- d) The trial shall commence on May 15, 2007 at 9:30 a.m.
- e) All other unexpired deadlines will be reissued by the Magistrate Judge.

Submitted by: Mary Rose Feria, Courtroom Manager

cc: Daphne E. Barbee, Esq.
Thomas A. Helper, Esq.
Judge Gillmor's chambers